UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

SUMMIT ACADEMY MANAGEMENT, INC. AND SUMMIT ACADEMY COMMUNITY SCHOOL FOR ALTERNATIVE LEARNERS, CANTON, OH **A Single Employer/Petitioner-Employer** **and** **Case No. 8-RM-1068** **OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES (OAPSE)/AFSCME, LOCAL 4, AFL-CIO** **Union**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.[1]

The following employees of the above-named Single Employer, (the Employer), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

[1] The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed, except as specifically modified. I have decided to reverse the hearing officer's ruling excluding Employer's Exhibit 7, the Complaint in the pending lawsuit in which the Union and the Employer are parties. This evidence is relevant to the Employer's position that the Union is not an appropriate bargaining representative. In addition, I have decided to entertain and rule on the Employer's argument that the Union should be disqualified from representing these employees.

The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction here. The labor organization involved claims to represent certain employees of the Employer employed at Summit Academy Community School for Alternative Learners, in Canton, Ohio. A question affecting commerce exists concerning the representation of these employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. The Petitioner-Employer and the Union filed post-hearing briefs which I have considered.

> *All full-time and regular part-time employees who work at the Summit Academy Community School for Alternative Learners, Canton, OH in the positions of teacher, instructor, including Spanish instructor and martial arts instructor, mentor, speech pathologist, special education coordinator and school secretary but excluding the director, guards and supervisors as defined by the Act.*

Approximately 17 are in the unit found to be appropriate.[2]

I. The Issues

A. Whether Summit Academy Management, Inc. (SAM), and Summit Academy Community School for Alternative Learners, Canton (SAC) are a single employer?

B. Does the Employer meet the definition of "Employer" under Section 2(2) of the Act, or is the Employer a political subdivision of the State of Ohio and therefore exempt from the Board's jurisdiction?

C. Whether the Union is disqualified from representing the Employer's employees.

D. Whether or not the employees in the positions of traveling teacher, speech pathologist, and special education coordinator share a community of interest with other employees in the unit and accordingly should be included in the unit found appropriate?

II. Decision Summary

I find that SAM and SAC constitute a single employer and that the Employer is not exempt from the Board's jurisdiction as a political subdivision of the State of Ohio but rather meets the definition of an employer under Section 2(2) of the Act. I also find that the Union is not disqualified from representing the Employer's employees. Accordingly, I shall direct an election in this matter. Finally, I find that employees in the positions of traveling teacher, speech

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[2] The Unit is in substantial accord with a stipulation between the parties except for the classifications of traveling teacher, special education coordinator and speech pathologist which I find should be appropriately included in the unit.

pathologist and special education coordinator share a community of interest with other employees in the unit and are therefore included in the unit.

III. Procedural Facts

On September 20, 2002, the Union filed a Request for Recognition with the Ohio State Employees Relation Board (SERB). In this request, the Union named SAC as the Employer and sought to represent certain of SAC's employees. SAC declined to voluntarily recognize the Union and instead filed a Petition for a Representation Election with SERB on October 9, 2002. SAM filed the instant representation petition with the Board on October 8, 2002 asserting it was the employer of certain teachers, mentors and clerical employees working at SAC. SAM seeks, through the instant petition, to have the NLRB assert jurisdiction and resolve the question concerning representation raised by the Union's Request for Recognition with SERB.

IV. Position of the Parties

A. The Petitioner-Employer argues that SAM and SAC do not constitute a single employer. Rather, the Petitioner-Employer contends that SAM is the Employer of the employees in question and satisfies the definition of employer under Section 2(2) of the Act. In the alternative, the Petitioner-Employer argues if SAC and SAM are found to be a single Employer, SAC, like SAM, is subject to the Board's jurisdiction because it is not a political subdivision. In addition, the Petitioner-Employer argues the appropriate unit in this case consists of all full-time and regular part-time SAM employees who work at SAC. Finally, the Petitioner-Employer argues that the Union has a conflict of interest that disqualifies it from representing the employees in question and that the Board, having asserted jurisdiction, should refuse to allow the Union to proceed to an election[3]

[3] At the hearing, the Hearing Officer informed the parties that the instant proceeding was not the appropriate forum for addressing this conflict of interest issue. As noted earlier, Employer's Exhibit 7, the Third Amended Complaint in a case captioned **State of Ohio ex rel., Ohio Congress of Parents & Teachers, et al. v. State of Ohio Board of**

B. The Union argues that SAM is not the Employer of the employees in question and lacks "standing" to file the RM petition. Rather, the Union argues that SAC is the Employer and that it should be excluded from Board jurisdiction because it is a political subdivision. Without waiving its contention that the Board lacks jurisdiction to direct an election, the Union argues that the traveling teacher, special education coordinator and speech pathologist should be excluded from any bargaining unit found to be appropriate.

V. Facts

On February 23, 2000, SAC was incorporated as a non-profit corporation by three individuals, John A. Freiman, Donald J. Thorne and Peter DiMezza to operate a community school. Such schools are also known as charter schools. The three incorporators also served as SAC's initial trustees. In SAC's Articles of Incorporation the corporate purpose is listed as follows:

> *Summit Academy is a community school whose educational purpose will be to address the needs of school-age children who exhibit characteristics of Attention Deficit Hyperactivity Disorder (ADHD) and/or other learning disabilities that put them at risk in the traditional classroom.*

As a community school under Ohio Revised Code (ORC), Chapter 3314, SAC was required to enter into a sponsorship contract with a sponsoring entity (ORC § 3314.02(c) (1).). As a result, on March 14, 2000, the Ohio State Board of Education and SAC entered into a comprehensive "Community School Contract." Under the contract and pursuant to the State's 1997 enabling legislation, SAC is precluded from charging tuition to its students.

The members of SAC's governing authority at the time the contract was executed included: Donald J. Thorne (President); Peter M. DiMezza (Vice-President); James L. Winkleman (2nd Vice-President) and John Freiman (Treasurer). Article I of the community

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Education, et al. Case No. 01-CVH-05-04457 was declared a rejected exhibit. I overrule the Hearing Officer and receive Employer's Exhibit 7 into evidence.

school contract sets forth that the school created will be a "public school, independent of the Canton City School District and is part of the state education program." Article II establishes that the term of the agreement is from the commencement of the 2000 academic year through June 17, 2005. Article III details that the governing authority is obligated to comply with various Ohio Revised Code Sections "as if it were a school district," maintain financial records "in the same manner as are records in school districts," "comply with the requirements and procedures for financial audits by the Auditor of the State" and establish Governing Authority policies and employee handbooks. Article IX requires prior written consent of the Sponsor and the Governing Authority to assign the agreement or any rights, duties or obligations under the agreement. Article X affirms that the contract constitutes the entire agreement between the parties and that any changes must be in writing to be binding.[4] Article XI details that the sponsor could decline to renew the contract and/or terminate the contract prior to its designated expiration for the following reasons: (1) failure to meet student performance requirements; (2) failure to meet generally accepted standards of fiscal management; (3) violation of the contract or applicable state or federal law; or (4) other good cause.

While the initial twelve pages of the SAC community school contract were drafted by the Ohio State Board of Education, significant portions of the contract which governed the manner in which the school was operated were drafted by DiMezza or his subordinates. For example, the policies relating to the termination of employment, student code of conduct and personnel policy were drafted by DiMezza.

SAM was incorporated on August 1, 2000, after the execution of the Community School Contract by SAC and the Ohio State Board of Education. SAM's trustees at the time included

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[4] No evidence was introduced at the hearing setting forth any changes to the community school contract or authorizing any assignment. Petitioner-Employer witness DiMezza testified that nothing in the contract prohibits

John A. Freiman, Peter DiMezza, Donald J. Thorne and James L. Winkleman. SAM's Articles of Incorporation described the corporation's purpose as providing personnel, equipment and administrative services to Summit Academy Schools. SAM has seven other management contracts with other community schools. The management agreement between SAC and SAM was executed on June 27, 2007 by SAC and on July 9, 2002 by SAM. The recital section of this management contract states SAM was organized to support educational institutions with a variety of educational services and products, and with human resources administration, including school personnel and business management, curricula, educational programs, contract administration and technology. The Summit Academy Management Employee Handbook, dated October, 2001, details the mission of Summit Academy Schools, describes various policies and benefits and notes these are subject to modification by the Board of Directors of SAM.

VI. SAC and SAM Constitute a Single Employer

The Board examines four factors in determining whether two or more entities constitute a single employer: (1) common ownership; (2) interrelation of operations; (3) common management; and (4) centralized control of labor relations. **Radio Technicians Local 1264 v. Broadcast Service of Mobile**, **380 U.S. 255 (1965); Mercy Hospital of Buffalo, 336 NLRB No**. 134, **slip op. at 2-3 (2001), Research Foundation of the City University of New York, 337 NLRB No. 152; and Denart Coal Co., Inc., 315 NLRB 850. (1994).** Not all of these four criteria need to exist to establish a single-employer status and a significant factor is the absence of an "arms length relationship found among unintegrated companies." **Denart Coal Co., Inc. 315 NLRB at 851 citing Operating Engineers Local 627 v. NLRB, 518 F. 2d 1040, 1046 (D.C. Cir. 1975, affd, in pertinent part sub nom. South Prairie Construction Co. v. Operating Engineers Local 627, 425 U.S. 800 (1976)**. The Board has held that the most

SAC from contracting with a third party to handle personnel matters. Further, DiMezza testified that the Department of Education was aware of SAM and did not prohibit its contractual relationship with SAC.

important criteria is centralized control over labor relations. **Research Foundation of the City University of New York, 337 NLRB supra, at sl. op. p. 9 citing Mercy Hospital of Buffalo, 336 NLRB No. 134, sl. op. at 2-3**. Finally, in applying the common ownership criteria to nonprofit enterprises, the Board looks to "whomever controls the operational and financial destiny of an entity or entities being scrutinized." **Pathology Institute, Inc. 320 NLRB 1050 at 1058 (1996), enf. mem. sub nom., Alta Bates Corp. v. NLRB, 116 F. 3d 482 (9th Cir. 1997), cert. denied, 522 U.S. 1028 (1997)**.

Ronald Thorne, James Winkleman, and Peter DiMezza serve as directors on both the SAC and SAM boards. While the Petitioner-Employer argues that each board has two additional members, the testimony reveals that decisions on the respective boards are made by simple majority vote. Obviously, Thorne, Winkleman and DiMezza constitute a majority of each Board. Although the Petitioner-Employer argues that SAC pays a management fee to SAM, the testimony reveals that, in actuality, this fee amounts to 100% of the funds received by SAC. Under these circumstances, I find that the factor of "common ownership" supports a finding of single employer status.

With respect to the second criteria, I find that the evidence establishes that SAC and SAM have interrelated operations. SAM's Articles of Incorporation state its purpose is to "provide personnel, equipment and administrative services to Summit Academy Schools." SAC's Articles of Incorporation describe SAC as a community school whose educational purpose will be to address the needs of school-age children who exhibit characteristics of Attention Deficit Hyperactivity Disorder (ADHD) and/or other learning difficulties that put them at risk in the traditional classroom." In the recital portion of the management contract between SAC and SAM, the parties agree they will "work together to bring educational excellence…" In Article VI of the management agreement SAC agrees to transfer to SAM a fee consisting of "all

start-up grants, state and federal per pupil allocations, transportation and federal per pupil allocations, transportation technology or other operational funds including private donations, endowments or grants applied for by Summit (SAC) or SAM." The management contract obligates SAM to cover the wages, compensation and expenses of SAM or Summit (SAC). Finally, SAM can terminate the management contract in certain designated circumstances including the State of Ohio's failure to adequately fund the operation the community school or SAC's "failure to adhere to the personnel, curriculum, program or similar material recommendations of SAM." On the basis of the foregoing, I find that the evidence concerning the second criteria, the integration of operations, supports a finding of single employer status.

I also find SAC and SAM share common management. DiMezza, Winkleman and Thorne, in addition to the being common directors of both boards, are also members of SAC's Governing Authority. SAC's officers include Thorne as President and Winkleman as Secretary. DiMezza serves as the Director of the Community School. The SAC/SAM management contract effective July 1, 2001, was entered into by the Board of Directors of SAM/SAC. As noted previously, although the Petitioner-Employer argues the respective boards have two additional board members, I note DiMezza, Winkleman and Thorne constitute a majority of these boards, which are self-appointing. Under these circumstances, I find the criteria of common management supports a finding of single employer status.

With respect to the final criteria, centralized control of labor relations, the Petitioner-Employer-Employer argues that SAM controls all aspects of the employment relationship with each of the employees the Union seeks to represent. In support of this contention, the Petitioner-Employer notes that the board of directors of SAC meets only quarterly thereby diminishing meaningful control over personnel matters. I find this argument unpersuasive given the overlap between the two entities' governing boards and the fact that DiMezza is the

Director of the Community School. In addition, I find that SAM is not independent of SAC in labor relation matters since Article III of the management contract establishes that SAM "shall be responsible and accountable to Summit for the management of the school." Under this Article at least one representative of SAM is required to attend SAC's board meetings and account on such activities as personnel, financial planning, recruiting and budgets. Finally, the contract is subject to termination by SAC in the event SAM fails to remedy a material breach of its duties or obligations under the management contract. In summary, I find that given the organizational structure between the two entities there is common control of labor relations policies between SAC and SAM.

Based on the evidence set forth above, I find that SAM and SAC constitute a single employer within the meaning of the Act. In making this finding, I specifically note that the operational and financial control of both entities is held by Thorne, Winkleman and DiMezza.

VII. THE EMPLOYER IS SUBJECT TO THE BOARD'S JURISDICTION

In **Management Training Corporation, 317 NLRB 1355 at 1358 (1995)** the Board held it would assert jurisdiction if an employer met both the definition of an "employer" under Section 2(2) of the Act and the applicable monetary jurisdictional standard. See also **Methodist Hospital of Kentucky, Inc., 318 NLRB 1107 (1995)**.

The Union contends that the board should decline to exercise its jurisdiction in this matter and defer to the State Employee Relations Board since it involves an interpretation of the enabling legislation establishing community schools. The Union argues that the Tenth Amendment to the United States Constitution supports this result.[5]

In **NLRB v. Natural Gas Utility District of Hawkins County, 402 U.S. 600, (1971)** the Supreme Court held that federal, rather than state, law governs the determination under Section

[5] The Tenth Amendment provides, 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

2(2) of the Act, entitle of whether an entity created under state law is a political subdivision of the State and therefore not an employer subject to the Act.

In **NLRB v. Natural Gas Utility, District of Hawkins County, 402 U.S. supra,** the Supreme Court has held that an entity is exempt from the Board's jurisdiction as a political subdivision if it is either: (1) created directly by the state, so as to constitute a department or administrative arm of the government, or (2) "administered by individuals who are responsible to public officials or to the general electorate." See also **Enrichment Services Program, Inc., 325 NLRB 818 (1998)**.

In **Hawkins County**, the Supreme Court affirmed that Board's practice of considering, but not necessarily being bound by, state law in making its determination of whether an entity is a political subdivision of the state.

The Ohio Revised Code 3314 and the terms of the Community School contract contain references to SAC as a "public school." In addition, pursuant to the contract, SAC is obligated to comply with state law and maintain financial records "in the manner as are records in school districts." The contract also indicates that meetings of the board of directors are open to the public, its records are open to the public and retirement contributions are made on behalf of employees to the applicable state employee retirement funds.

With respect to the first prong of the **Hawkins County** test for determining whether an entity is a political subdivision, the evidence reveals that neither SAM nor SAC was created directly by the state so as to constitute departments or administrative arms of the state of Ohio. Rather, both entities were formed by private individuals filing articles of incorporation with the state. SAC is an Ohio nonprofit corporation formed to organize a community school and SAM is an Ohio nonprofit corporation providing management services to SAC and several other related Summit community schools. SAC is one of many private corporations in Ohio that have utilized

the legislation which sets forth the parameters of a community school. Since the evidence fails to establish that the state directly created SAC or SAM, I find that the Employer fails to meet the first prong of the **Hawkins County** test.

In order to be exempt as a political subdivision, under the second test of **Hawkins County**, an employer must be administered by individuals who are responsible to public officials or to the general electorate. In **Fivecap, Inc., 331 NLRB 1165 (2000)** the Board explained it would find an entity to be an exempt political subdivision if a majority of its board of directors is responsible to public officials or the general electorate. The record evidence revealed that none of the directors of the respective SAC or SAM boards is responsible to the general electorate. In addition, both boards are self-appointing. The selection of SAC's board of directors is not controlled by its sponsor, the Ohio Department of Education. I find that no individual or group of individuals involved in the Community School's administration is responsible to the general electorate. Although the contract between the sponsor and SAC sets forth broad regulations and policies common to all community schools under the Ohio statute, the functions of the State Board of Education are regulatory in nature.. This is no evidence that the day-to-day administration of the community school is controlled by any public official or entity. As none of the individuals involved in the community school's operation is responsible to public officials, I find the Employer is not a political subdivision within the meaning of the Act.

With respect to the monetary standard's, SAM's annual gross receipts from all sources exceeds one million dollars. SAM annually purchases materials valued in excess of $50,000 from points located outside the state of Ohio. The Employer thus meets the monetary standards the Board has established for private schools. **Windsor School, 200 NLRB 991 (1972) and Shattuck School, 189 NLRB 886 (1971)**. Accordingly, it is appropriate for the Board to assert jurisdiction over the Employer.

VIII. THE UNION IS NOT DISQUALIFIED FROM REPRESENTING EMPLOYEES IN THE UNIT

Although the RM Petition brought this matter before the Board, the Employer seeks, in effect, to have its own petition dismissed based upon its contention that the Union is not qualified to represent unit employees due to a conflict of interest.

The Employer contends that the Union's alleged conflict of interest arises because it is one of the many plaintiffs in a lawsuit currently pending in the Court of Common Pleas for Franklin County, Ohio in **State of Ohio ex rel., Ohio Congress of Parents and Teachers, et al. v. Ohio State Board of Education, et al., Case No. 01-CVH-05-04457**. SAC is one of the many defendants in the action.

In this lawsuit the plaintiff seeks a declaratory order that Ohio Revised Code, Chapter 3314 is unconstitutional and as a remedy seeks injunctive relief barring the distribution of state funds to schools such as those operated by the Employer.

The Employer argues that the Union, as a plaintiff to the lawsuit, seeks to "put SAC, and other charter schools like it, out of business." The Employer further argues that this goal is in conflict with the Union's attempt to gain recognition as the employees' representative.

The Employer principally relies on the Board's decision in **Bausch & Lomb Optical Co., 108 NLRB 1555, 1559 (1954)** to support its argument. In **Bausch & Lomb**, the union represented a unit of employees at a Bausch & Lomb facility which manufactured and sold eyeglasses and other optical products. The union established a business that was in direct competition with Bausch & Lomb. Bausch & Lomb then refused to bargain with the union until the union ceased being a business competitor.

The Board found that under the unique circumstances of the **Bausch & Lomb** case, the Employer's refusal to bargain was not unlawful. Accordingly, the Board dismissed the 8(a)(5) and (1) complaint that had issued against the Employer. In so finding, the Board noted that the

union's role as a business competitor "may well be at odds with what should be its sole concern-that of representing the Respondent's employees." **Id at 1559**. The Board found that the Union dual capacity made fair dealing with the employer "inherently impossible." **Id at 1562**.

In the instant matter, while the Union is a plaintiff in a lawsuit challenging the Employer's eligibility to receive funding from the state of Ohio, I do not find that the Union's role as a plaintiff in the lawsuit disqualifies it from representing the Employer's teachers. While it seems clear that the Union objects to private employers receiving public funding to operate schools that the enabling legislation defines as part of the state of Ohio's program of education, I do not find that it is inherently impossible for the Union to fairly represent the employees at the present time.

Since there is no evidence reflecting a present day conflict between the Union and the employees at issue here, I find it speculative to deny the Union the right to participate in an election sought by the Employer because of a lawsuit that may take years to ultimately resolve. Accordingly, I shall direct an election in this matter.

IX. THE TRAVELING TEACHER, SPECIAL EDUCATION COORDINATOR AND SPEECH PATHOLOGIST SHOULD BE INCLUDED IN THE PROPOSED BARGAINING UNIT

As noted earlier, the parties are in substantial accord as to the appropriateness of the unit except for three classifications. In making unit determinations, the Board considers whether employees share a community of interest. Factors considered include: employees' wages, hours, and working conditions; qualifications, training, and skills; frequency of contacts and extent of interchange with each other; frequency of transfers into and out of the unit sought; common supervision; degree of functional integration; collective-bargaining history; and area bargaining patterns and practices. **Kalamazoo Paper Box Corp., 136 NLRB 134 (1962)**. No one factor has controlling weight. **Airco, Inc., 273 NLRB 348 (1984)**. I find the unit agreed to by the

parties to be an appropriate unit and decide the unit placement of the disputed classifications by applying the preceding factors.

The Traveling Teacher

The traveling teacher is a full time employee of SAM whose schedule is divided among five community schools managed by SAM. The record reveals the traveling teacher teaches social studies and science. Like the Spanish instructor whom the parties have stipulated is appropriately in the unit, the traveling teacher works one day per week at SAC. The Petitioner-Employer's witness DiMezza testified that the traveling teacher interacts with other teachers at SAC with respect to the coordination of curriculum.

The traveling teacher, like all employees at the SAC facility is supervised by SAC's director. The traveling teacher's salary of $30,000 is within the range of the other teachers at the facility. Like other employees at SAC, benefits and other terms of conditions of employment of the traveling teacher is governed by the SAM Employee Handbook. Under these circumstances, I find that the traveling teacher shares a community of interest with other unit employees and should be included in the unit found appropriate.

The Speech Pathologist

The speech pathologist spends a majority of her time at the SAC facility. The speech pathologist interacts regularly with other SAC classroom teachers in an effort to identify students whose development and education would benefit from such specialized instruction.

The speech pathologist, like other employees at SAC is supervised by SAC's director, Peter DiMezza. As such, the speech pathologist attends staff meetings conducted by the director. The speech pathologist's terms and conditions of employment is governed by the SAM Employee Handbook. Like teachers, the speech pathologist is certified in her field. The speech pathologist salary, while somewhat higher than the range for teachers, is relatively comparable.

Finally, the vacation benefits enjoyed by the speech pathologist are similar to the benefits enjoyed by other members of the teaching staff. On the basis of the foregoing, I find the speech pathologist shares a community of interest with other staff members and should be included in the unit.

The Special Education Coordinator

In an effort to accommodate its students' special needs, the Employer has assigned a fulltime special education coordinator to the SAC facility. The special education coordinator works collaboratively with students' teachers to develop, implement and improve individual education plans. The functional integration between the special education coordinator and other teaching staff supports the inclusion of the special education coordinator in an appropriate unit.

Like all other employees at the SAC facility, the Special Education Coordinator is supervised by the Director. The Special Education Coordinator's salary is identical to the salary of the Speech Pathologist and comparable to the salary of the other teaching staff. Finally, the special education coordinator is subject to the same terms and conditions of employment as other employees at SAC. Under these circumstances, I conclude the special education coordinator shares a community of interest with the other employees in the unit and I shall include this position in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained

their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less that 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO**.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969)**. Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570-0001. This request must be received by the Board in Washington by January 2, 2003.

Dated at Cleveland, Ohio this 19th day of December 2002.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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